IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.8086 of 2004

Ashok Krishnant Gotne...petitioner
vs
Shikshan Prasarak Mandal & ors.. respondents
Mr Manish Mistry for Mr M P Vashi for petitioner
Mr.Dinesh W Bhosale for respondent nos l and 2

CORAM:A.P.SHAH & S.C.DHARMADHIKARI JJ.
Dated l5.l0.2004

P.C:

Heard advocates.

l. Petitioner is an assistant teacher working in the respondent no. 2 school. The respondent no. 2 is a recognised and aided school being run by the respondent no.l society. It appears that an incident took place on 2.2.2004 in respect of which an FIR came to be registered against the petitioner under sections l43, l47, l48, l49, 326, 324 and 323 of IPC. The petitioner alongwith other accused was arrested on 2.2.2004 and released on 5.2.2004 on bail. By a letter dated 30.7.2004 the management put the petitioner under suspension on the ground of his remaining in police custody for more than 48 hours. It appears that the decision to suspend the petitioner was taken under rule 33(5) of the MEPS Rules, l98l. Rule 33(5) has been interpreted by

this court in Madhukar Namdeo Patil vs Chairman, Sudhagad Education Society, 2000 (4) Mah L J 206 wherein the court held as under:

> "sub-rule (5) of rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, l98l stipulates that the employee in such a case shall be considered as under suspension for any period during which he is under preventive detention or where he is detained in police or judicial custody for a period exceeding forty eight hours or is undergoing imprisonment. Where the employee is in police or judicial custody, he shall be considered as under suspension when the period of custody exceeds 48 hours. Moreover, the suspension can only before the period during which the employee is in police or judicial custody and only if the period of such custody exceeds 48 hours. The period of suspension under sub-rule (5) of rule 33 must necessarily come to an

> end once the period of; judicial or police custody is terminated. Suspension under rule 33(5) is not an indefinite suspension during the pendency of a criminal prosecution. That was not the intention underlying the framing of rule 33(5) and the words used in the said rule militate against an interpretation which extends the period of suspension to the pendency of the criminal proceedings. The period of suspension under rule 33(5) comes to an end once an employee ceases to be in police or judicial custody. It is clear beyond doubt that suspension of the employee under rule 33(5) where the employee has been detained in police or judicial custody cannot exceed the duration of the detention of the employee in such custody...."

2. The order of suspension is thus contrary to the provisions of rule 33(5) of the said Rules. We therefore set aside the impugned order 30.7.2004. Respondent nos. 2 and 3 are directed to release

the subsistence allowance payable to the petitioner during the suspension period within one month. Needless to say that this order will not preclude the respondent nos. 2 and 3 from taking appropriate action against the petitioner as permissible in law.

Petition is accordingly disposed of.